IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 4 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION

Versus

CMD, ELB SCHLIFF (INDIA) LTD.

Appearance:

1. COMPANY PETITION No. 4 of 2005

BOARD OPINION for Petitioner No. 1

SERVED BY AFFIX.(N) for Respondent No. 1,7

NOTICE SERVED for Respondent No. 2-3,6,8

NOTICE UNSERVED for Respondent No. 4

SINGHI & CO for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 27/04/2005

ORAL JUDGEMENT

This petition has been registered on the basis of the opinion forwarded by BIFR vide letter dated 27.08.1997 under Section 20 (1) of Sick Industrial Companies (Special Provisions) Act, 1985 that it is just and equitable to wind up M/s. ELB Schliff (India) Ltd. Though this letter was dated 27.08.1997, it appears that the BIFR has subsequently written a letter dated 23.12.2004 along with which all papers were forwarded to the Registrar of this Court and the same has been received on 11.01.2005. That is the reason that the present petition has been registered only in 2005.

2. The Court has issued notice on 17.01.2005. Pursuant to the said notice, Mrs. Poonam Mathur for Singhi & Co. has appeared on behalf of ARCIL to whom the debts have been assigned by ICICI. Mr. K.M. Parikh, learned advocate has appeared and submitted that he will file his appearance on behalf of respondent No. 2 i.e. State Bank of India. Respondent No. 6 was duly served. The Court has passed an order on 14.03.2005 for appointment of the Provisional Liquidator and directed the O.L. to take over the charge of the assets of the Company. The O.L. was further directed to publish advertisement with regard to the admission and final hearing of the petition in the Newspaper, namely, Indian Express and Loksatta-Jansatta both in Baroda editions fixing the date of final hearing on 20.04.2005. The publication of the advertisement in the Official Gazette was dispensed with. The O.L. was also permitted to incur the advertisement expenses out of the staff salary reserve fund which would be reimbursed by the Secured Creditors and the said expenses were ordered to be treated as expenses in winding up. The Court has further observed that the intervention of the Secured Creditors at this juncture would not be treated as the Secured Creditors' participation in the winding up proceedings and the same was without prejudice to their rights to remain outside the winding up proceedings.

3. Pursuant to the order passed on 14.03.2005, the O.L. has published the advertisement as directed above on 03.04.2005. He has also filed his report to this effect dated 17.04.2005 along with which relevant newspaper cuttings were produced. The O.L. has submitted that pursuant to the advertisement, he has received the claim from ex-employees as well as from Shri Ram Safety Security Guards for security bill. On that day, he has deputed his person to take possession of the properties of the Company in liquidation and he would file his compliance report to the above effect. The matter was thereafter adjourned to today i.e.

27.04.2005.

4. Today when the matter is taken up for hearing, the O.L. has submitted that he has already taken possession of some of the units of the Company in liquidation. However, he will file his compliance report only after taking possession of all the units of the Company in liquidation.

5. Mrs. Poonam Mathur, learned advocate appearing for ARCIL has submitted that since there is no objection from any corner and since the O.L. has already taken the possession of some of the units of the Company in liquidation, the formal order of winding up may be passed.

6. The Court has considered the said submission. The O.L. has also supported that the winding up order may be passed in the matter.

7. The Court has considered the order passed by BIFR on 21.08.1997 wherein it is observed that at the hearing held on 30.04.1997 the Bench considered the objections / suggestions to the show-cause notice issued for winding up of the Company and noted that an objection had been received from the Vice-Chairman and Managing Director of the Company requesting the Bench to reconsider its opinion to wind up the Company and give them another opportunity to revive the Company, as their products are import substitute and their performance had improved over the last two years. The Bench took note of the fact that the Company was found viable by IMTECH and the show-cause notice for winding up the Company had to be issued as the promoters did not have the funds required for rehabilitation, and no rehabilitation proposal was received in response to the advertisement for change in management. The Bench decided to allow the promoters one last opportunity by giving them time upto 15.07.1997 for submission of a comprehensive rehabilitation proposal based on a joint venture without withdrawing the show-cause notice for winding up of the Company. The Bench directed the promoters to sign a joint venture agreement with the foreign party and submit a comprehensive rehabilitation scheme to the Operating Agency by 15.07.1997. In the event of the Company submitting a viable rehabilitation scheme to the Operating Agency by 15.07.1997 as directed by the Bench, the Operating Agency would examine it, formulate a proper scheme and submit a report to the Board by 31.07.1997 after holding a joint meeting. It was indicated that if there was general agreement of all concerned parties on

the scheme, and it was found viable with means of finance fully tied up, the Bench may consider publishing and circulating a Draft Scheme based upon it. It was also indicated that if no such agreed package emerged, or if no joint venture agreement could be signed with the foreign partner, or no rehabilitation proposal based thereon being submitted by the promoters to the Operating Agency by the specified date, the Board may confirm their prima facie opinion to wind up the Company without holding any further hearing.

8. The Bench has also observed in its order that on a request received from the Company, the Bench allowed extension of time upto 12.08.1997 for submission of a rehabilitation proposal to the Operating Agency. The Bench found no justification to grant them further extension of time upto December, 1997 as requested by the Company vide their letter dated 29.07.1997. The Bench has also taken note of the fact that ICICI (Operating Agency) vide their letter dated 13.08.1997 have reported that the Company has not been able to finalise the joint venture agreement till date. The promoters were thus evidently neither serious nor resourceful enough to revive the Company. There was thus no viable rehabilitation proposal with means of finance fully tied up before the Board for consideration despite ample opportunities having been given to all concerned. The Bench, therefore, confirmed its prima facie opinion that the Company is not likely to make its net worth exceed its accumulated losses within a reasonable time while meeting all its financial obligations and that the Company as a result thereof was not likely to become viable in future and hence, it was just, equitable and in public interest that it should be wound up under Section 20 (1) of the Act.

9. After having considered the opinion of the Board as well as after having heard the learned advocates appearing for the respective parties and the Official Liquidator, the Court is of the view that ample opportunities were given by the BIFR to the Company for revival. However, the Company could not avail those opportunities. Even after issuance of notice and publication of advertisement in the Newspapers, nobody has come forward to object the winding up petition. Notices were sent to the Company. Nobody was there at the Company's regd. office and hence, the notice was served by affixation. The Company is virtually closed. No business activities are carried out. The Company is not in a position to discharge its financial obligations and the Company has virtually lost its economic

substratum. The Company is, therefore, required to be wound up and it is just and equitable and also in public interest to wind up the respondent Company. The Court is, therefore, in complete agreement with the opinion forwarded by BIFR and pass the order of winding up of the respondent Company.

10. Since the O.L. is already appointed as Provisional Liquidator, he will now work as Liquidator of the respondent Company and exercise all the powers conferred on him under the provisions of the Companies Act, 1956. The order regarding taking over the possession of the assets of the Company has already been passed and hence, no further order is required to this effect. The O.L. is, therefore, directed to inform the Ex-Management to file statement of affairs within the statutory time limit and is further directed to file compliance report on or before 20.06.2005. After taking over possession of the entire assets of the Company in liquidation and before appointing the Security Agency as well as the Valuer for the purpose of taking inventory, the O.L. shall take prior permission of this Court. The O.L. is further directed to simultaneously start the process of inviting the claims from the Workers as well as the Creditors.

11. With the aforesaid directions and observations, this petition is accordingly disposed of.

[K.A. PUJ, J.]

#Savariya#

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